

December 7, 2018



Talbot County Planning Commission
Final Decision Summary

Wednesday, October 3, 2018 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

John N. Fischer, Jr., Chairman

Paul Spies, Vice Chairman

William Boicourt

Michael Sullivan

Phillip "Chip" Councill

Staff:

Mary Kay Verdery, Planning Officer

Miguel Salinas, Assistant Planning Officer

Brennan Tarleton, Planner I

Elisa Deflaux, Environmental Planner

Ray Clarke, County Engineer

Mike Mertaugh, Assistant County Engineer

Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Fischer called the meeting to order at 9:00 a.m.

2. Decision Summary Review—September 5, 2018—The Commission noted the following corrections to the draft decision summary:

- a. Line 16, Mr. Councill was not in attendance, mark (absent).
- b. Lines 203-205, change to read: "...with all staff conditions being complied with and that the 30-year restrictive covenant to restrict logging and mining along a vertical line on the east side of the property is required as a condition."
- c. Line 482, change to read: "The Commission felt the language of Amendment No. 4 was straightforward, less ambiguous than the proposed alternative."
- d. Line 512, insert paragraph after the word meetings. Capitalize the word "As this is late in the game it does not allow for public comment."
- e. Line 528, correct to read: "Commissioner Fischer wanted to express to Mr. Showalter that these late entries go around the normal process"

Commissioner Boicourt moved to approve the draft Planning Commission Decision Summary for September 5, 2018, as amended. Commissioner Spies seconded the motion. The motion carried unanimously.

3. Old Business—None.

4. New Business

- a. Small Scale Subdivision—Many Blessings Farm, LLC—27993 Villa Road, Easton, MD 21601 (map 25, grid 13, parcel 40 & 205, zoned Rural Conservation/Western Rural Conservation), Elizabeth Fink – Fink, Whitten & Associates, LLC, Agent.

Mr. Tarleton presented the staff report for a small scale subdivision to reconfigure Tax Parcel 40 creating two buildable lots and establishing a 40 foot wide private road right-of-way on a property located at 27993 Villa Road, Easton, Maryland. In addition to the small scale subdivision the applicant is also proceeding through the minor revision plat process to abandon the lot lines of Tax Parcel 205 resulting in the acreage now becoming part of Remaining Lands of Tax Parcel 40.

Staff recommendations include:

1. Address the September 12, 2018 Technical Advisory Committee (TAC) comments from the Department of Planning & Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner and the Critical Area Commission.

Ms. Fink appeared on behalf of applicant, Many Blessings Farm, LLC. She stated they have been working on some of the comments. One of the comments from the Environmental Planner is that non-tidals and streams be looked at. Their Environmental Planner, Mr. McLaughlin will go out and they are coordinating with Al Kampmeyer of MDE to come out and look at it. Ms. Fink requested that the project be given preliminary/final approval. Mr. Tarleton stated that this project is only at sketch phase. Ms. Fink stated that was correct, on the initial review the entrance was to be on Holly Road, but they decided to come in off of Villa Road. That sent the project back to sketch.

Commissioner Boicourt asked about the configuration of Lot 2, was the purpose to reserve agricultural land, or what the reason was. Ms. Fink said part of the design was around the perc site, but there is also a perennial stream along the hedgerow and hydric soils so the buffer had to be expanded.

Commissioner Fischer asked who is going to buy this lot. Ms. Fink stated this is a family farm, the father gets the remainder of the farm, the son gets Lot 2 and the daughter gets Lot 1.

Commissioner Fischer asked for Commission and public comments; none were made.

Commissioner Sullivan moved to approve the small scale subdivision for Many Blessings Farm, LLC, 27993 Villa Road, Easton, Maryland; with staff recommendations, including the change to the last sentence of the Staff Recommendations to read “Preliminary Plat submittal”. Commissioner Spies seconded the motion. The motion carried unanimously (5-0).

- b. Small Scale Subdivision—Udo & Cornelia Heckenbach—23722 St. Michaels Road, McDaniel, MD 21647 (map 14, grid 24, parcel 10, zoned Rural

Conservation/ Western Rural Conservation), Elizabeth Fink – Fink, Whitten & Associates, LLC, Agent.

Mr. Tarleton presented the staff report for a small scale subdivision to reconfigure Tax Parcel 10 into four buildable lots and establishing a 40 foot wide private road right-of-way on a property located at 23722 St. Michaels Road, McDaniel, Maryland.

Staff recommendations include:

1. Address the September 12, 2018 Technical Advisory Committee (TAC) comments from the Department of Planning & Zoning, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner and the Critical Area Commission.

Ms. Fink appeared on behalf of the Heckenbach's. She stated not much has changed since sketch. This subdivision is purely for estate planning purposes. There is no intent to develop this property. She stated they have no issues with most of the comments, they are being addressed. Mr. McLaughlin has been out and flagged wetlands again and will have Al Kampmeyer from MDE come out again. One of Mr. Mertaugh's issues was the private road and access point. There is a road maintenance agreement, and they now have an attorney on staff who is working on this agreement. Ms. Fink stated Mr. Heckenbach was taken aback by the Notice to Proceed and the amount of planting required. The intent is not to develop these lots any time in the near future. She stated they are hoping to work with staff to defer any buffer planting on the unimproved lots until such time as a building permit is pulled on the lot and that will be a trigger. On Lot 1, the parent house, Critical Area is requiring nearly two acres of plantings because of the very large driveway which increases the lot coverage total. Ms. Fink stated she is trying to work with staff for some type of trigger mechanism for that as well. Just because he puts a line around his house should not cause him to have to plant two acres of trees on his lot. He has already done extensive plantings on Lot 2, Lot 4 is mostly forested and on Lot 1 he is just trying to maintain the vista which is why he brought the property. Ms. Fink also asked if they would consider allowing her to work with staff on the buffer issues, along with Mr. Armistead, so this project can go forward.

Commissioner Boicourt asked if they had not given deferred planting previously. Ms. Deflaux stated they had allowed deferred planting before on lots remaining in agriculture. On parent parcels (like Mr. Heckenbach's) sometimes lots have been deferred for 2-3 years after subdivision. Ms. Deflaux stated in this case she has not seen a revised buffer management plan so she does not know if she can offer anything else. Commissioner Boicourt stated it is hard to keep track of all of this and enforce it at a later time. Ms. Deflaux stated an agreement would have to be recorded in the land records. Instead of planting on his lot, Mr. Heckenbach wants to put trees on his farm parcel as street trees, not buffers. But when one of the lots

147 is built on that lot will have to establish the buffer. He is not getting a relief from
148 the requirement.

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150 Ms. Deflaux said many of these projects are tilling as close to the water as they
151 are allowed. We can deal with the timing issues, but she does not want to be
152 locked into anything because no one has brought her a planting plan to look at. It
153 has to be easy to enforce.

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155 Commissioner Councell stated that he has a property in Queen Anne's County
156 and they are required to carry a bond on the property. Ms. Deflaux stated they will
157 have to carry a bond too. They worked with Bruce Armistead, Ryan Showalter
158 and Mike Pullen and came up with a Deed of Trust Agreement that is recorded in
159 the land records. Ms. Fink stated the Heckenbach's would be open to something
160 like that and Bruce Armistead is their attorney and he could come up with some
161 language that is acceptable to staff. Mr. Heckenbach asked if he could plant on
162 Lot 2 or Lot 3. Ms. Fink stated she did not know the answers but she was
163 confident between Mr. Armistead, herself and staff they could come up with
164 something that works for everybody that meets the intent of the law.

165
166 Ms. Deflaux stated she cannot guarantee that he will not have to plant the trees.
167 We want the buffer established and we want the plants to live. When the property
168 owners buy in to the process the plants thrive. When the property owner sees this
169 as an impediment and they are just stealing my view, after the two year review
170 who knows what happens to the plants.

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172 Commissioner Councell stated what he is hearing is that staff is willing to work
173 with them.

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175 Commissioner Boicourt stated some of these issues are items he would want to
176 see at final. Commissioner Councell also felt they should come back for final.

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178 Commissioner Sullivan asked if there is any reason we do not need a waiver? Mr.
179 Tarleton stated when they initially came for sketch they came before the
180 Commission for a lot size waiver and it was granted.

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182 Commissioner Fischer asked for public comments; none were made.

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184 **Commissioner Boicourt moved to approve the preliminary small scale four**
185 **lot subdivision for Udo and Cornelia Heckenbach, 23722 St. Michaels Road,**
186 **McDaniel, Maryland; with staff recommendations. Commissioner Sullivan**
187 **seconded the motion. The motion carried unanimously (5-0).**

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189 c. Resolution No. 265 – A Resolution to amend the Talbot County Comprehensive
190 Water and Sewer Plan to reclassify and remap real property located on Leeward
191 Lane, Tilghman, Maryland, described as Tax Map 44, Parcel 35, Lot 4, from
192 Unprogrammed to "S-1" immediate priority status

Mr. Clarke presented Resolution 265 to the Commission and stated he would also need a finding that this Resolution is consistent with the Comprehensive Plan. The County Council introduced Resolution 265 on September 25th. This property is classified as a Tier III-B and is part of the Tilghman Wastewater System. This is part of the lots along the water that were never included. The owner of Lot 44 has asked that the Comprehensive Water and Sewer system be extended to include their lot so they can build their house.

Mr. Clarke showed the Commission a map of the area and the owners who had chosen not to come into the system, including Lot 44. Now they take applications as they receive them from those owners.

In order to extend sewer, the Comprehensive Water and Sewer Plan will need to be amended. To do that the Planning Commission will need to find that this Resolution is consistent with the Comprehensive Plan. Then it will go to the County Council to adopt the Resolution. Then we have met the COMAR Resolution and it will go to MDE and they will review and approve it. Because Lot 44 is an unimproved lot there will be no grant funds. The grinder pump, force mains, all will be paid for by the property owner. Commissioner Spies asked what the approximate cost of that would be. Mr. Clarke said it could be from \$20,000-\$25,000.

Commissioner Fischer asked if the lots that opted out initially would have had help when the line was driven by initially. Mr. Clarke stated they would still have been eligible for the Bay Restoration Fund \$20,000 grants as long as their septic system was installed prior to October 2008, if it was installed after that they would not be eligible.

Commissioner Boicourt moved to recommend the County Council approve Resolution No. 265 to reclassify Map 44, Parcel 35, Lot 4 from Unprogrammed to “S-1”; and that Resolution No. 265 is consistent with the Comprehensive Plan. Commissioner Spies seconded the motion. The Motion carried unanimously (5-0).

Ms. Verdery explained that there should be a statement as to where in the Comprehensive Plan, what goals or objectives this supports in the Comprehensive Plan when the Commission makes this statement.

Commissioner Fischer stated that in finding this Resolution consistent with the Comprehensive Plan the Commission’s intent was to state that it improves the water quality of the Chesapeake Bay which is a primary objective of the Comprehensive Plan.

5. Discussions Items

Ms. Verdery gave an update of Bill No. 1401 and No. 1402 which were approved by County Council, which were the Zoning Ordinance and Zoning Maps. They will be effective November 10, 2018. They will reflect the three new villages designations; Village Hamlet, Village Mixed and Village Residential. They provide new land use categories and amend some of the existing categories. The County Council came over yesterday afternoon and had cake and said congratulations on all of our hard work. Ms. Verdery stated she recognized the amount of cookie filled work sessions it took to get us through the process. She wanted to thank everyone as well. Commissioner Boicourt stated it was very nice and each Council Member had something nice to say. Commissioner Fischer commended Ms. Verdery and Planning and Zoning staff for all they did. Ms. Verdery also commended Jenifer, the consultant from ERM and her work on the Ordinance.

Bill No. 1403, Noise Ordinance becomes effective October 27th.

The Zoning Ordinance is the only one which needs to move forward to Critical Area. We are hoping this project will be scheduled for the November meeting. They generally do not meet in December, so we do not know what that will mean in regarding to timing of Critical Area approval. Anything related to Critical Area sections of the Code is in flux.

We are working to get the Ordinance on e-code, on line, and all the forms and applications updated.

Commissioner Fischer asked about the company that will handle short-term rentals and if they had borne any fruit yet. Mr. Salinas stated it is in the setup phase. We hope to have a demo by the end of the week. We hope to go live in the near future.

Commissioner Boicourt asked about appointments to the Short-Term Rental Review Board.

Ms. Verdery stated that they are drafting an advertisement because there are several boards and commissions with open positions.

Commissioner Fischer stated the noise Committee was destined to have discord because of 5 people on one side and 5 on another. One could develop a Short Term Review Board of composed simply of five reasonable people. He stated he will speak with Jennifer. He added that in his experience partisan review boards commonly become dysfunctional.

Ms. Verdery said there are certain standards set out in the Code for the STR Board that have to be represented. The most significant part of this amendment to short term rentals is how the Board handles new applications and complaints.

Commissioner Spies stated it is difficult but you don't want someone who does not know about horses to make a recommendation about horse manure. You need someone who has experience.

Commissioner Sullivan stated he assumes the County Attorney, Mr. Kupersmith will be coaching them as to what they need for a framework.

6. Staff Matters

Ms. Verdery stated that RDC, owner of the Martingham Golf Course property was approved for the expansion of the golf course and received the variance and special exceptions from the Board of Appeals for the driving range. This was appealed by adjacent property owners and upon appeal there was a request that the Board of Appeals should have considered covenants that are associated with that property. The Court determined there is nothing in the Statute that permits the Board to consider private covenants and there is no error in their decision not to consider covenants. She stated there were several areas where the Board replied with vague responses that repeated the question: "The proposed use will not significantly adversely affect the adjacent existing agricultural use." So the Court sent the case back to the Board on remand to provide greater detail regarding their determinations.

Ms. Verdery stated that Robert Graham who has been Chief Code Compliance Officer is retiring October 19th and Mike Duell is the new Chief Code Compliance Officer and Duane Gottschalk is the new Alcohol Beverage/Code Compliance Officer and they will be at the November meeting.

Mr. Salinas stated the consultant has completed two reports: Best Practices (six communities along the Atlantic Coast and their best practices) and Zoning Discovery Report which is an analysis of NextStep190 and the old code. Those will be posted and once posted the team will be drafting language and then meet with the steering committee and outreach will happen. Once the first draft is produced it will be posted on the website, there will be emails and community meetings. The hope is November or December. There will be work sessions with the Planning Commission and County Council.

7. WorkSessions

8. Commission Matters

9. Adjournment–Commissioner Fischer adjourned the meeting at 9:57 a.m.